

LESSON FIVE

Core Learning Goal: 1

The student will demonstrate an understanding of the historical development and current status of principles, institutions, and processes of political systems.

Expectation: 2

The student will evaluate how the United States government has maintained a balance between protecting rights and maintaining order.

Indicator 1.2.1

The student will analyze the impact of Supreme Court decisions on governmental powers, rights and responsibilities of citizens in our changing society.

Assessment Limits:

- ? Cases include: **Marbury v Madison**, **McCulloch v Maryland**, *Plessy v Ferguson*, *Brown v Board of Education*, *Miranda v Arizona*, *Gideon v Wainwright*, *Tinker v Des Moines Board of Education*, and *New Jersey v TLO*.
- ? Other cases will be used but information about the case will be provided in the stem.
- ? The immediate or long term impact of achieving "Equal Justice Under the Law".

Overview:

In this lesson students will be introduced to the Case Study Method. The case *Marbury v Madison* will be the demonstration case. Then students will independently analyze the case *McCulloch v Maryland*.

Lesson Objectives:

Students will identify the process of writing a case brief.
Students will analyze the case *McCulloch v Maryland*.

Materials:

Overhead Transparency: **Case Study Format Sheet**

Government textbook

Teacher Resource: **Analysis of Marbury v Madison**

Teacher Resource: **Analysis of McCulloch v Maryland**

Useful websites:

www.findlaw.com

www.law.cornell.edu/syllabi

www.oyez.nwu.edu/oyez.html

Procedures:

1. Ask students to interpret the following quote:
 “It is very dangerous doctrine to consider the judges as the ultimate arbiters of all constitutional questions. It is one which would place us under the despotism of an oligarchy.”
 (Thomas Jefferson, letter to W.C. Jarvis, Sept. 28, 1820.)
2. Review the concept of judicial review. Ask: “How did the court obtain this power ?”
3. Explain to students that today the Case Study Method will be introduced as a tool for summarizing Supreme Court cases. Show a transparency of the handout **Case Study Format Sheet** and explain the process of writing a case brief.
4. Have students read information on *Marbury v Madison* from their text or another source. Use the Teacher Resource **Analysis of Marbury v Madison** to guide students in writing a brief of this case.
5. Instruct students to read information on *McCulloch v Maryland* from their text or another source. Have them independently write a case brief. Use the Teacher Resource **Analysis of McCullough v Maryland** to assess student accuracy.

Assessment of Indicator:

Have students answer these two Brief Constructed Response items:

- ? Describe the concept of judicial review.
 - ? Should the Supreme Court have the power of judicial review? Explain.
 - ? Include examples and details to support your answers.
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- ? How did the case *McCulloch v Maryland* impact the relationship between the federal and state governments?
 - ? Was the Supreme Court justified in its decision? Explain.
 - ? Include examples and details to support your answer.

Use the Social Studies Rubric to score student responses.

Case Study Format Sheet

I. Name of Case

II. Facts

- a. Who was involved in the case?
- b. What happened?
- c. How did the lower court decide on this case?
(Optional)

III. Issue (written as a question)

What was the legal issue that had to be decided?

IV. Arguments for the Petitioner

- a. What were the arguments for the petitioner?
- b. What precedents were cited?

V. Arguments for the Respondent

- a. What were the arguments for the respondent?
- b. What precedents were cited?

VI. Decision

- a. What was the decision of the court?
- b. What was their reasoning?
- c. Were there any significant dissenting opinions?

Analysis of *Marbury v Madison*

- I. ***Marbury v Madison*** (1803)
- II. **Facts:** On his last day as President, John Adams attempted to fill vacancies in the judicial branch with Federalists before the Democratic-Republican Party gained control of the Presidency and Congress. He made a series of midnight appointments that were signed and affixed with the seal of the U.S. Time ran out and several commissions were not delivered. President Thomas Jefferson ordered Secretary of State Madison not to deliver the commissions. William Marbury was supposed to be appointed justice of the peace for the District of Columbia. Marbury went to the Supreme Court to ask that a writ of mandamus be issued. This would force Madison to perform his required duty. Section 13 of the Judiciary Act of 1789 had given the court the power to issue such a writ.
- III. **Issues:** Does Marbury have the right to the commission? If Marbury has a right to the commission, is a writ from the Supreme Court the proper remedy?
- IV. **Argument for the Petitioner:** Marbury argued that the commission was signed, sealed, and should have been delivered. Marbury had a standing to sue.
- V. **Argument for the Respondent:** Madison argued that President Jefferson ordered him to withhold the commission. Jefferson believed that because the commission had not been delivered under President Adams, the appointment had not been completed.
- VI. **Decision:** Although Marshall declared that Marbury had a right to the commission, he said that issuing a writ was not a part of the court's original jurisdiction. Congress had given this authority to the court in Section 13 of the Judiciary Act of 1789. It was unconstitutional for Congress to add to the original jurisdiction so Section 13 was voided by the Court. Marshall thus gave the Supreme Court the power of judicial review.

Analysis of McCulloch v Maryland

- I. ***McCulloch v Maryland*** (1819)
- II. **Facts:** Congress created a national bank. One branch of the bank was located in Maryland. The State of Maryland passed legislation that would enable the state to tax the bank. When the validity of this law was upheld in Maryland courts, Baltimore bank cashier James McCulloch appealed the case to the federal Supreme Court.
- III. **Issue:** Does the United States have the authority to create a national bank? Does a state (Maryland) have the authority to tax the national bank?
- IV. **Argument for the Petitioner:** The national bank was an agent of the federal government. It should not be taxed by the State of Maryland.
- V. **Argument for the Respondent:** The United States Constitution does not give the federal government the authority to establish a bank. If it does, then a state has the authority to tax the bank located within its borders.
- VI. **Decision:** Congress could establish the bank under the 'necessary and proper clause' of the Constitution, giving the legislative branch broad use of implied powers. The State of Maryland could not tax the national bank. "The power to tax is the power to destroy."